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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,849	02/28/2002	Mustafa Akram	H 4420 PCT/US	5227
423	7590	06/25/2004	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,849

Applicant(s)

AKRAM ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-23 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-23 and 26-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

- 1 This action is responsive to the amendment filed on 4/21/2004.
- 2 The cancellation of claims 24-25 is acknowledged. Pending claims are 18-23 and 26-40.
- 3 The rejection of claims 18, 20-22, 28, 30-36 and 38 under 35 U.S.C. 102(b) as being anticipated by Grollier et al. (US 4,425,132), is withdrawn because of the applicant's amendment in which the claims required at least one fiber-structure improving agent to be presented in the pretreatment composition.

### NEW GROUND OF REJECTION

#### *Claim Rejections - 35 USC § 103*

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-23 and 26-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 4,425,132) in view of Nicolas-Morgabini et al. (US 5,954,871).

Grollier (US' 132) teaches a two-stage process for dyeing keratin fibers. The process comprises treating the fibers with a first composition having a pH of less than 8 and containing a from 0.05 to 6% of direct dyestuff of 4-amino-3-nitrophenol, wherein the amounts of the dye is within the claimed range or overlapped with the claimed range as claimed in claims 18, 20-23, 30-31 and 38 (see col. 8, line 5, col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursor of para-phenylenediamine

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and coupler of 2-methyl resorcinol as claimed in claim 18 and 32-35 (see col. 3, lines 60-61, col. 6, line 5 and col. 27, claim 19). The application time of the first composition is about 10 to 30 minutes, which is within the claimed range of time as claimed in claim 28 (see col. 10, lines 9-10) and the application time of the first composition is about 2 to 40 minutes, which is overlapped with the claimed range of time as claimed 29 (see col. 10, lines 9-10).

Grollier also teaches a method in which the oxidative dye precursor is oxidized with an oxidizing agent such as hydrogen peroxide as claimed in claim 36 (see col. 12 the table and col. 15, Example 4). With respect to claims 19, 39 and 40, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply such a process for dyeing hair by spraying the composition to any portion of the hair with the reasonable expectation of success because the reference teaches a process for dyeing hair by treating the hair with a composition that can be packaged in an aerosol (see col. 10, lines 16-20), and, thus, a person of the ordinary skill in the art would expect such a composition could be applied by spraying method and would expect such a method to have similar results to those claimed, absent unexpected results.

Although, Grollier et al. (US' 132), teaches a two-stage process for dyeing keratin fibers comprising treating the fibers with a first composition of direct dyestuffs (see col. 8, line 5, col. 10, line 5 and col. 26, claim 12) and post-treated with an oxidation colorant composition comprising oxidative dye precursors (see col. 3, lines 60-61, col. 6, line 5 and col. 27, claim 19). the reference does not teach at least one fiber-structure improving agent to be presented in the pretreatment composition as required by the amended claims. However, the reference teaches a

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process comprising applying to the hair a composition that comprises improving agents such as thickeners, treating agents, sequestering agent and sun filters (see col. 11, lines 59-63).

Nicolas (US' 871) teaches in analogous art of hair dyeing formulations, a method for dyeing hair (see abstract). The method comprises applying to the hair a composition comprising a fiber-structure-Improving agent of panthenol as claimed in claims 26-27 (see col. 14 Example 1) and enzymes as oxidizing agents as claimed in claim 37 (see col. 6, lines 11-15).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by replacing the hydrogen peroxide with the enzymes as taught by Nicolas and also to incorporate panthenol in the composition with a reasonable expectation of success for improving the hair properties. Further, Nicolas teaches the equivalence between hydrogen peroxide and enzymes in the dyeing composition as oxidizing agents (see col. 6, lines 11-19) and, thus, a person of the ordinary skill in the art would expect such a composition to have similar properties and could be applied by a method similar to those claimed, absent unexpected results.

### ***Response to Arguments***

5 Applicant's arguments filed 4/21/2004 have been fully considered but they are not persuasive.

With respect to the rejection of Grollier et al. (US' 132) in view of Nicolas-Morgantini et al. (US' 871), Applicant argues that Nicolas-Morgantini et al. (US' 871) disclose only a single application step wherein the colorants are pigments which are quite different from the

substantive and oxidative dyes of either Grollier et al. or applicant's process and, therefore, the combination of these two references thus fails to render obvious applicant's claimed invention.

The examiner respectfully, disagrees with the above arguments because the primary reference of Grollier et al. (US' 132) teaches a process for dyeing hair with a dyeing composition that comprises a number of oxidative dyestuff precursors (see col. 3, lines 16-68 and col. 4, lines 1-68) and the secondary reference of Nicolas-Morgantini et al. (US' 871), teaches a process for dyeing hair using a composition that comprises melanin pigment precursors of indoline and indole compounds which are also oxidative dyestuffs (see col. 3, lines 61-67 and col. 4, lines 1-67), and, the references teach and disclose similar dyeing compositions that comprise similar oxidative dyeing compounds for the same utility. Therefore, the prima facie case of obviousness has been established.

6 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
6/23/2004



Brian P Mruk

PRIMARY EXAMINER

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